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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report of States parties due in 1994

Addendum

POLAND*

[7 May 1996]

* For the second periodic report submitted by the Government of the Republic of Poland, see CCPR/C/32/Add.9 and Add.13; for its consideration by the Committee, see CCPR/C/SR.708 to SR.711 and Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/42/40), paras. 55-104. For the third periodic report submitted by the Republic of Poland, see CCPR/C/58/Add.10 and Add.13; for its consideration by the Committee, see CCPR/C/SR.1102 to SR.1105 and Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/47/40), paras. 125-181.

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I. GENERAL

1. The previous - third - report on the measures adopted by Poland under the International Covenant on Civil and Political Rights, including the information supplementing the said report, covered the period January 1987 until July 1991. The present - fourth - report, presented by the Government of the Republic of Poland on the basis of article 40, paragraph 1 (b) of the International Covenant on Civil and Political Rights covers the period from August 1991 until December 1994.

2. The implementation of the International Covenant on Civil and Political Rights in the period August 1991 to December 1994 is illustrative of further development of the legal and institutional guarantees of civil rights and freedoms instituted in Poland in 1989. Reference is made here to the consolidation and widening - regardless of age, sex, and national origin - of the human rights and freedoms in the domain of thought, conscience and religion, as well as securing the freedom of speech, manifestation of one's own ideas, participation in public life, freedom of movement, equality before the law, and equal protection by the law.

3. An important stage in the structural transformations in Poland were the free and democratic elections, the first in post-war Poland. They took place on 27 October 1991. These elections, based on the principle of proportional elections (distribution of mandates among the lists of political parties in proportion to the number of votes they acquired), resulted in considerable disintegration of the Diet and of the Senate. In consequence, the parliament was unable during its term of office to adopt a new constitution; moreover, it had a limited power to call and support a stable government.

4. The want of a new constitution responding to the needs of the democratic Polish State was deeply felt. In view of the above the 1952 Constitution - previously amended several times - was subjected to further numerous amendments. In order to comply with the new demands the Diet passed a Constitutional Act dated 23 April 1992, on the procedures to adopt the Constitution of the Republic of Poland (Journal of Laws No. 67, item 336), amended by the act dated 24 April 1994 (Journal of Laws No. 61, item 251). For the work connected with the preparation of the draft of the new Constitution a Constitutional Committee of the National Assembly was set up composed of 46 members elected by the Diet and 10 senators elected by the Senate.

5. The right of legislative initiative in what concerns the presentation to the National Assembly of the draft of the new Constitution has been granted to the Constitutional Committee, and to a group of no less than 500,000 citizens in possession of active suffrage to the Diet. The Constitution adopted by the Diet and the Senate - joined together into the National Assembly - is to be accepted by the nation in a constitutional referendum.

6. Irrespective of the work undertaken on the new Constitution, on 17 October 1992, a Constitutional Act was adopted on the Mutual Relations between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-Government, called the Little Constitution (Journal of Laws No. 84, item 426). The system of government established there provides for

separation into three powers. The aim of the Act is to improve the performance of the leading governing authorities of the State until the new Constitution of the Republic of Poland is adopted. According to these assumptions the Little Constitution shall control the constitutional status, the function, the principles of organization and the procedure of the Diet and of the Senate, of the President of the Republic of Poland, and of the Council of Ministers, and moreover the status of the members of the Diet and of the senators, the principles of referendum and the constitutional status of the local self-government.

7. The Constitutional Act under discussion has in principle revoked the 1952 Constitution. There remain in force only those provisions which (upon being appropriately amended) concern the fundamental structural principles of the State. They are the provisions designating the principles of a democratic state of law, where sovereignty of the nation, law and order, political pluralism, and freedom to set up political parties are preserved. These regulations also provide guarantees of freedom in such areas as business activity, the right of ownership and inheritance, and also regulate the status of the armed forces, the organization of legal protection bodies such as the Constitutional Court. The Court of the State and the Commissioner of Citizens' Rights, as well as the organization and functioning of the courts of law and public prosecutors' offices, where the separation of courts and the independence of judges are ensured and guaranteed.

8. Among the regulations of the previous Constitution 1/ maintained in force there are some which, after being appropriately amended, specify the basic rights and obligations of the citizens. For example, by the Constitution Amendment Act dated 19 April 1991 (Journal of Laws No. 41, item 176), article 67, paragraph 1, received new wording, and now provides that Poland consolidates and widens the rights and freedoms of its citizens. It is in these areas that the most substantial transformations have occurred in Poland.

9. In May 1993 the Diet passed a non-confidence vote to the Council of Ministers without at the same time electing a new Prime Minister. Consequently, the President of the Republic of Poland dissolved the Diet on 29 May 1993. As a result the Diet's term of office has also come to an end (art. 4, para. 5, of the Little Constitution).

10. In turn, the second free and democratic elections to the Diet and to the Senate of the Republic of Poland took place on 19 September 1993. The elections to the Senate, carried out on the basis of the 10 May 1991 Act - Electoral Regulations to the Senate of the Republic of Poland (Journal of Laws No. 72, item 319) - took place in accordance with majority rule (the mandates for senators were obtained by the candidates who received the biggest number of votes in the given constituency). On the other hand, the elections to the Diet were carried out on the basis of the new Electoral Regulations dated 28 May 1993 (Journal of Laws No. 45, item 205). These Electoral Regulations

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1/ Whenever "Constitution of the Republic of Poland" or "Constitution" is mentioned in the present report, it denotes the regulations maintained in force (after being amended) of the 1952 Constitution.

have indeed maintained the principle applied in the previous elections of proportional elections of members of the Diet, yet at the same time they introduced a principle that in the distribution of mandates in constituencies only those electoral committees could participate where the lists obtained at least 5 per cent of all the votes cast. For electoral coalitions set up by different parties the limit was 8 per cent (these limits did not apply to the national minorities). Elections were won by the political groups of leftist and peasant orientation (the Democratic Left Alliance and the Polish Peasant's Party), who are thus within the coalition set up by the Government.

11. In order to extend the guarantees of access to human rights and freedoms Poland joined the Optional Protocol to the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 16 December 1966, in New York. In accordance with article 9, paragraph 2 of the Optional Protocol the Protocol as concerns Poland came into force on 7 February 1992. The contents of the Protocol have been made public by way of their publication in the Journal of Laws 1994, No. 23, item 80.

12. Poland has also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, amended with Protocol Nos. 3, 5 and 8, and supplemented by Protocol No. 2. The Act of Consent for Ratification by the President of the Republic of Poland of the said Convention was accepted by the Diet on 2 October 1992 (Journal of Laws No. 85, item 427), while the contents of the Convention and the declaration of the President of the Republic of Poland of its ratification dated 15 December 1992, as well as the declaration of the Government that the Convention would come into force as concerns Poland on 19 January 1993, were announced in the Journal of Laws 1993 No. 61, items 284 and 285. With the Act dated 8 April 1994 (Journal of Laws No. 67, item 287) the Diet gave the President powers to ratify the Supplementary Protocol (No. 1) and Protocol No. 4 of the said Convention.

13. The Government of the Republic of Poland, on the basis of the declaration delivered on 19 March 1993, to the Secretary-General of the Council of Europe, has approved for the period of three years, as from 1 May 1993, the competence of the European Commission on Human Rights as concerns admission of complaints addressed to the Council of Europe by any person, non-governmental organization or group of individuals who feel they are victims of infringement by Poland of the rights resulting from this Convention. An identical declaration was delivered on the matter of acknowledging for the period of three years, as from 1 May 1993, of the jurisdiction of the European Court of Human Rights in all the matters concerning interpretation and application of the above specified Convention (Journal of Laws 1993 No. 61, item 286). In accordance with the information available, in the period from 1 May 1993 until the end of May 1994, 700 notifications of infringements by Poland of the rights resulting from the Convention on protection of human rights and fundamental freedoms were entered. On 10 October 1994, the Secretary-General of the Council of Europe was presented the ratification documents of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Convention shall enter into force as concerns Poland on 1 February 1995.

14. Accession by Poland in November 1991 to the Convention relating to the Status of Refugees signed in Geneva on 28 July 1951, and to the Protocol relating to the Status of Refugees signed on 31 January 1967, in New York, should also be pointed out. The norms of international law in the area of protection of human rights and freedoms ratified and acknowledged by Poland found their way not only in the internal legislation but also in the courts' judicial decisions which quite often referred directly to these norms, including the respective articles of the Covenant.

15. In the period under investigation there appeared in Poland a great many publications on the subject of the protection of human rights. One of these is the work published in 1994 by A. Michalska: Human Rights Committee - Competence - Functioning - Judicial Decisions, where the activity of the Committee is extensively discussed, the text of the Covenant and all the general comments presented, and samples of individual complaints dispatched to the Committee quoted. In 1993 the work of Piotr Daranowski was published: International Protection of Civil and Political Rights in Statu Nascendi, International Covenant on Civil and Political Rights. The text of the Covenant was published several times. In the daily press the most important decisions of the Committee relating to individual cases are discussed.

16. The Ministry of Justice provides materials on international protection of human rights to the courts and public prosecutors' offices and organizes training courses for judges and public prosecutors on these subjects.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE COVENANT

Article 1

17. Poland continues to base its relations with other States on peaceful coexistence and economic, social, cultural and scientific cooperation. In numerous initiatives undertaken by Poland in the international arena, and also in the propagated and implemented principles of foreign policy, Poland is guided by her determination to respect sovereignty, inviolability of frontiers, integrity, non-interference in the internal affairs of other States, respect for human rights and fundamental freedoms, as well as the right of any nation to decide about its own destiny.

18. The mutual relations with neighbouring countries are founded on the spirit of friendship, good-neighbourly relations, equality of rights, confidence and respect. Treaties concluded on 17 June 1991 between Poland and the Federal Republic of Germany (Journal of Laws 1992 No. 14, item 56); on 18 May 1992 between Poland and Ukraine (Journal of Laws 1993 No. 125, item 573); on 22 May 1992 between Poland and the Russian Federation (Journal of Laws 1993 No. 61, item 291); and on 23 June 1992 between Poland and the Republic of Belarus (Journal of Laws 1993 No. 118, item 527) are illustrative of the attitude taken.

Article 2

19. Poland, being a democratic, law-abiding State, guarantees to all those who find themselves on Polish territory full protection of the rights and freedoms acknowledged by the International Covenant on Civil and Political Rights.

20. A substantial part in the adoption of measures for the protection of human rights and freedoms - guaranteed by the State - is played by the independent courts. The new legal solutions have led to a systematic development of the competence of common courts and of the High Administrative Court.

21. In the years 1991-1994 a further development of the competence of common courts took place. On the basis of the Radio Broadcasting and Television Act of 29 December 1992 (Journal of Laws 1993 No. 7, item 34), the Regional Court (Business Court) in Warsaw examines appeals against the decision of the Chairman of the National Council for Radio Broadcasting and Television to allow broadcasts accused of violating the regulations, rights or provisions of the licence granted. Investigation by common courts of law of some of the cases connected with the elections is provided for in the Electoral Regulations to the Diet of the Republic of Poland Act of 28 May 1993. In accordance with the provisions of this Act the district courts investigate complaints over decisions by heads or mayors of communes (city mayors) concerning complaints over irregularities in the register of voters. The regional courts, on the other hand, examine the applications of persons concerned over the decisions provided for by the said Act in the event it is ascertained that election posters, slogans, leaflets, statements or other forms of propaganda and canvassing include data and information that is not true. The investigation of such an application takes place within 24 hours from the time such application was filed. As from 1 September 1994, the common courts of law have taken over cases from the sphere of mining law investigated until then by special extrajudicial boards. The competence of the common courts in these matters has been provided for by the Land Surveying and Mining Law Act of 4 February 1994 (Journal of Laws No. 27, item 96).

22. On the basis of the amendment of the Code of Criminal Procedure Act of 13 May 1994, the decisions of the public prosecutor concerning security of property of the defendant have been subjected to judicial control.

23. In the final stage of parliamentary work is the new High Administrative Court Act providing for further development of the competence of the said Court.

24. Access to court proceedings for protection of the various categories of civil rights has caused in recent years a considerable increase in the number of cases brought before the courts. In 1992 4,191,322 cases were filed in the common courts of law, i.e. over twice as many as in 1989 (as indicated in the previous report). In 1993 the number was even higher and amounted to 4,568,255 cases. The cases included 2,492,781 civil cases, 716,702 family cases, 268,155 labour law cases, 110,113 social insurance cases, 369,162 business cases, 93,982 registration cases and 1,815,654 cases concerning land and mortgage registers. The increasing influx of cases filed with the common

courts of law continued in 1994. During this period 4,867,896 cases were filed, 6.6 per cent more than in 1993. In the above-quoted overall number of cases 2,743,609 were civil cases, 760,550 family cases, 250,498 labour law cases, 143,040 social insurance cases, 316,542 business cases, 102,786 registration cases, and 1,998,031 land and mortgage register cases. The persisting tendency of the increasing number of cases to the courts, in view of the limited increase in the number of judges, has caused an increase in the cases not settled and protracted proceedings at law.

25. In 1992 the High Administrative Court had 24,336 complaints filed, i.e. over 10,000 more than in 1989. In 1993 the influx was 30,278 complaints, while in 1994 there were 32,501 complaints. The stated increase in those years, as compared with 1992, of the influx of complaints referred both to the acts of the supreme and central bodies as well as to regional bodies. The increase in the number of complaints against the administrative acts of the supreme and central organs is to a large extent a consequence of the relatively high increase of complaints concerning the decisions of the head of the Veteran Soldiers and Repressed Persons Board. In most cases complaints referred to decisions depriving the veteran soldiers of their rights delivered within the framework of the verification procedure carried out on the basis of the Veteran Soldiers and Some Persons Victims of the War Repressions and of the Post-War Period of Repressions Act dated 24 January 1991 (Journal of Laws No. 17, item 75). The deprivation of the veteran soldiers' rights took place, among other considerations, in the event it was ascertained that a given person had been employed in the security organ (secret police). The view of the High Court expressed in the resolution dated 7 May 1992, that the denotation: "security organ (secret police)" specified in the above-mentioned Act denotes all the organizational units of the security organ (secret police) department, was taken into consideration here. Under the circumstances, among many persons deprived of veteran soldiers' rights were also persons who within the units of this organ were employed as administrative personnel or else served in the Domestic Security Corps, Frontiers Protection Forces or in the Civil Militia, the latter called into being for preservation of order and the fight against crime. In connection with the above the Commissioner of Citizens' Rights applied to the Constitutional Court to deliver a decision ascertaining the inconsistency of article 21, paragraph 2 (4a), of the above-quoted Act with the regulations of the Constitution. By verdict delivered on 15 February 1994, the Constitutional Court complied with the motion of the Commissioner of Citizens' Rights.

26. A considerable number of complaints filed with the High Administrative Court concerned matters of customs duties and tax commitments. This is connected with the constant increase of the exchange of goods with abroad (duties) and the development of the free market structure economy (tax obligations). The number of complaints in matters concerning employment, social benefits and social protection also increased considerably. Some of the complaints are connected with unemployment.

27. In considering the complaints, special attention was payed by the High Administrative Court, among other things, to the necessity of respecting in full by all of the law organs of the right of every citizen to honest and just procedures. Moreover, the Court indicated the need to take into consideration when resolving the complaints the international agreements ratified by Poland.

For example, in the verdict delivered on 28 February 1994 concerning permits for aliens to be domiciled in Poland, the High Administrative Court referred directly to the provisions included in article 23 of the Covenant.

28. An important place in the work carried out in Poland on behalf of the protection of the human rights and freedoms acknowledged in the Covenant is occupied by the Commissioner of Citizens' Rights. The scope of and procedures for the Commissioner's activities are described in detail in the Commissioner of Citizens' Rights Act dated 15 July 1987. The Act has been extensively analysed in the third periodic report. The amendment of this Act performed in 1991 is discussed in the information relating to article 26 of the Covenant. The uniform text of the Act under consideration was announced in the Journal of Laws 1991, No. 109, item 471.

29. Two reports presented to the Diet and to the Senate by the Commissioner of Citizens' Rights relate to the period covered by the present report. The first covers the period from 20 November 1991 until 12 February 1993, the second from 13 February 1993 until 12 February 1994. These reports prove that in the first period 24,540 applications and 35,236 letters were received by the Commissioner. Most of the applications concern conditions in the penal institutions (16 per cent), matters relating to the sphere of labour law and social insurance (14.6 per cent), business matters, taxes, etc. (11.2 per cent), and administration of justice and prosecution agencies (10.5 per cent). In the second period, on the other hand, 29,273 applications and 43,193 letters were received by the Commissioner. The number of applications concerning labour law and social insurance increased to 27.9 per cent, business matters, taxation, etc. increased to 17.3 per cent, administration of justice increased to 19.3 per cent. However, the share of applications concerning the rights of detained persons diminished by half (from 16 per cent in the first period to 8.7 per cent in the second).

30. The reports of the Commissioner of Citizens' Rights indicate that on the basis of citizens' application and letters the Commissioner has also undertaken actions of a general character. In the period from 13 February 1993, until 31 January 1994, the Commissioner dispatched to different recipients 249 pronouncements, lodged an application with the Constitutional Court in 5 cases requesting a generally binding interpretation of the law, and in 19 cases lodged motions appealing against the legal regulations in view of the inconsistency, of those regulations with the Constitution. Moreover, the Commissioner lodged in the given period 21 applications with the High Administrative Court for a response on a legal issue, and lodged 43 extraordinary appeals against valid-in-law judicial decisions. The generally acknowledged practice of the Commissioner of Citizens' Rights includes inspections in different governmental units and institutions performed either personally or by the members of his staff. For example, from the beginning of 1993 until the end of January 1994 such inspections were performed in 19 penitentiary units, 5 correctional houses and shelters for minors, 25 units under the Ministry of Defence, 14 units under the Ministry of Interior and in 5 units (boarder crossings) under the President of the Central Board of Customs. These inspections allowed the Commissioner of Citizens' Rights to assess closely the complaints reported in the applications and letters concerning non-observance of human rights and freedoms, to find justification for the accusations, if any, and to take the

appropriate steps. Some of the undertakings of the Commissioner, directly related in subject matter to different articles of the Covenant, are discussed in the information concerning those articles. It should be noted, however, that the Commissioner of Citizens' Rights in his second report assumed that the level of protection of citizens' rights and interests in 1993 had considerably deteriorated in many spheres including social rights (increase in the number of unemployed persons, decrease of the basis for valorization of disability pensions and old age pensions), housing problems, medical care, obligations resulting from taxes, etc. Frequent instances of lengthy court procedures have been depicted. According to the Commissioner, the reason for the deterioration in the protection of citizens' rights in the indicated areas was above all the critical financial condition of the State, which limited the level of protection of these rights not only in the performance of some of the State organs (for example the deeply felt lack of financial assets in the judicature) but also in all other departments of law-making. At the same time the Commissioner of Citizens' Rights underlined that in the observance of political rights he had not ascertained in 1993 any major infringements. The best respected was the freedom to express ideas and beliefs.

31. A tremendous step forward was made in the sphere of treatment of imprisoned persons. Accusations of vital importance concerning violations of the right to join unions, as well as the right to organize meetings, have not emerged.

32. Actions aimed at the protection of human rights and freedoms have also been taken by the public prosecutors' agencies in view of the Public Prosecutors' Agencies Act dated 20 June 1985 (Journal of Laws 1994, No. 19, item 70, and No. 105, item 509). Apart from their basic sphere of activity, to prosecute crimes, in 1993 public prosecutors controlled 3,492 cases on administrative proceedings and social insurance proceedings. On the basis of the results obtained 1,769 means of appeal were undertaken, including 1,228 applications for instituting administrative proceedings, 358 objections were lodged along with 64 complaints to the High Administrative Court. In the given period public prosecutors investigated 327 resolutions of local self-government and decisions of local agencies of government administration, and as a result undertook legal measures against 11 such acts. Moreover, in 1993 the High Administrative Court examined 1,486 cases with the participation of the public prosecutor.

33. In 1994 the participation of the public prosecutors in administrative, civil, business and social insurance proceedings was as follows: 3,122 cases were subjected to the control of public prosecutors, and on the basis of the established results 1,857 legal measures were taken. The number included: 1,462 applications for instituting administrative proceedings, 183 objections, 65 appeals against and 74 complaints to the High Administrative Court. Throughout 1994, 463 resolutions of local self-government organs and ordinances of regional organs of government administration were investigated. As a result indispensable legal measures were adopted on 23 examined acts. Moreover, in the period under discussion 949 cases in proceedings before the High Administrative Court were investigated with the participation of a public prosecutor.

Article 3

34. In accordance with the Constitution women and men shall have equal rights in all fields of public, political, economic, social and cultural life. The situation in this aspect has not changed since the last periodic report was submitted. However, the problem that in real life men hold more managerial positions has been perceived, and in comparable positions the remunerations of men are higher.

Article 4

35. In the period under review measures aimed at suspending the application in Poland of the obligations resulting from the present Covenant have not occurred. The possibility of introducing in Poland a state of war or introducing in some parts of the country or on the entire territory martial law or a state of emergency is at present provided for in the Little Constitution. Article 24 of the said Constitution provides that the Diet can take a resolution to introduce a state of war only and exclusively in the event of a military assault on the Republic of Poland or in the event that an international agreement imposes an obligation of joint defence against an act of aggression. When the Diet is not in session, a state of war may be declared by the President. The above-quoted regulation provides that the terms, legal effects and mode of implementation of a declaration of a state of war shall be established by statute.

36. According to article 36 of the Little Constitution the President may introduce martial law in a part or upon a whole territory of the Republic of Poland and may declare a partial or general mobilization in the event of State security being endangered by external forces. The regulation provides also that the organization of the authorities of the State during a period of martial law, and other legal consequences of such a State declaration of martial law, shall be established by statute. And, in accordance with article 37 of the above Constitution, the President may, for a definite period of time but not longer than three months, introduce a state of emergency in a part of or upon the whole territory of the State in the event of threats to its internal security or following upon natural calamity. The period may be extended only once by not longer than another three months with the consent of the Diet. According to this regulation, whilst a state of emergency exists, the Diet shall not be dissolved, and its term of office shall not expire before three months following the date of termination of this state of emergency. Neither the Constitution nor the electoral laws shall be changed during the period of a state of emergency. The regulation also provides that the detailed terms, legal effects and mode of implementation of a state of emergency shall be established by statute.

37. Until now no new statutes that are mentioned in the Little Constitution and relating to a state of war, martial law or a state of emergency have been adopted. Moreover, the following remain in force: the State of Emergency Act dated 5 December 1983 (Journal of Laws No. 66, item 197, and Journal of Laws 1989 No. 34, item 178) and the Martial Law Decree dated 12 December 1981 (Journal of Laws No 29, item 154; Journal of Laws 1982, No. 3, item 18; and Journal of Laws 1989, No. 34, item 178).

Article 5

38. The rules of interpretation envisaged in article 5 of the Covenant are fully observed in Poland. None of the human rights acknowledged by the Polish legal order was limited or suspended for the reason that the Covenant does not recognize such laws or recognizes such laws on a more limited scale. The situation in this aspect has not changed since the last periodic report.

Article 6

39. In the Polish legal system the inherent right to life of any human being is protected as the highest gift. The perpetrator causing the death of another human being bears severe criminal responsibility and financial liability. At present several court proceedings are pending against persons accused of causing the death of many people during the suppression of the workers' protests and demonstrations in December 1970, and during martial law introduced in Poland in 1981.

40. The Polish penal law complies entirely with the regulations provided for in article 6, paragraphs 4 and 5, of the Covenant, as mentioned already in the previous report. In spite of the fact that this law continues to maintain the death penalty for the most serious crimes, in reality, conforming to the approved non-formal memorandum, not one death penalty has been executed since 1990. Nevertheless, the attitude of the general public in Poland towards the concept of lifting the death penalty is differentiated. In some circles the attitude remains that such a penalty should in certain instances be preserved. The draft of the new Code of Criminal Procedure worked out by the Committee for the Code of Criminal Procedure Reform does not consider the penalty of death.

41. On 15 March 1993, the Family Planning, Protection of the Human Foetus and the Conditions for Admissibility of Abortion Act dated 7 January 1993 (Journal of Laws No. 17, item 78) came into force. The above Act in article 1, provides that any human being as from the moment it is conceived shall have an inherent right to life, and that the life and health of any child from the moment it is conceived shall be protected by law. The Act has also introduced regulations providing for penal responsibility in the event death is caused to a conceived child or damage is done to the body or disfunction of health is threatening its life. By this Act only the mother of a conceived child is released from criminal responsibility. On the other hand death caused to a conceived child is not acknowledged as a crime in the event it has occurred as the result of the performance by a doctor in an open medical establishment of an abortion under certain circumstances specifically detailed in the Act (the pregnancy constitutes a threat to life or seriously threatens the health of the mother, the death of the conceived child occurred as a consequence of saving the life or health of the mother, prenatal tests confirmed serious and irreversible damage to the foetus, the pregnancy occurred as a result of rape).

42. In view of the fact that in some social circles the Act under discussion had been considered too repressive, amendments were introduced by the Diet to the extent that abortion shall be permitted in the event the woman finds herself in very unfavourable circumstances of life, her personal condition is

complicated and, before the expiry of 12 weeks of the duration of pregnancy and three days after medical consultation, she still insists on the abortion being performed. The Act has not entered into force as the President, in accordance with his rights under article 18, paragraph 3, of the Little Constitution, refused to sign the Act and referred it to the Diet for reconsideration. In consequence the Diet approved the President's veto, and the Act was once again not adopted.

Article 7

43. The Polish legal system contains indispensable legal measures to guarantee the observance of article 7 of the Covenant and of the regulations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984 (Journal of Laws 1989, No. 63, items 378 and 379).

44. In the previous report it was acknowledged that some citizens had been beaten by functionaries of the Civil Militia (present police) and convicts had been beaten by functionaries of the Prison Guards. In all the incidents penal and disciplinary proceedings have been instituted. The regulation of article 7, paragraph 3, of the Punishment Execution Code providing that penalties shall be executed in a humanitarian manner while respecting the human dignity of the convicted person, is strictly observed. This was confirmed during the visits the Commissioner of Citizens' Rights payed to the penal institutions. In the opinion of the Commissioner of Citizens' Rights, included in his report for the period from 13 February 1993 to 12 February 1994, the situation in the Polish prison system as concerns treatment of imprisoned persons has considerably improved, and is - broadly speaking - fair.

45. The guarantees of observing the obligations resulting from article 7 of the Covenant and of the Convention against Torture, in relation to detained persons are also provided for in the draft of the new Punishment Execution Code. At the base of the drafted legal regulations are such general values as respect for the human rights of imprisoned persons and their humanitarian, just and individual treatment.

Article 8

46. In Poland the prohibition of slavery, the slave trade and servitude, provided for in article 8 of the Covenant, is strictly observed. Polish legislation in this field provides also for the fulfilment of obligations resulting from international law, and in particular from the Supplementary Convention dated 7 September 1956 on the Abolition of the Slave Trade, and Institutions and Practices Similar to Slavery, ratified by Poland (Journal of Laws 1963, No. 33, items 185 and 186).

47. There are no regulations that allow for forced or compulsory labour. Therefore, the regulations of Convention No. 29 of the International Labour Organization concerning Forced or Compulsory Labour dated 28 June 1930, are observed (Journal of Laws No. 20, items 122 and 123) and of Convention No. 105 concerning the Abolition of Forced Labour dated 25 June 1957 (Journal of Laws 1959, No. 39, items 240 and 241).

48. Entering into a contract of employment, regardless of its form, requires a mutual declaration of will both by the employer and the employee. It also concerns the public works organized on the basis of the regulations of the Employment and Unemployment Act dated 16 October 1991 (Journal of Laws No. 106, item 457; Journal of Laws 1992, No. 21, item 84, and Journal of Laws 1994, No. 108, item 516). In the ordinance of the Minister of Labour and Social Policy dated 17 December 1991, issued on the basis of article 19 of the Act, concerning the principles of organizing public works (Journal of Laws No. 122, item 540) it is underlined that participation in public works is voluntary, and the participants in such works enter into contracts of employment. Such principles were also adopted in the new Employment and Prevention of Unemployment Act dated 14 December 1994 (Journal of Laws 1995, No. 1, item 1) which entered into force on 1 January 1995. Wrongs done to the citizens as the result of applying in Poland in the post-war period of compulsory labour are now being redressed. For example, in accordance with the Act on Revalorization of Pensions and Disability Pensions, Principles of Establishing Pensions and Disability Pensions, and amendments of some of the other acts dated 17 October 1991 (Journal of Laws No. 104, item 450; year 1992, Journal of Laws No. 21, item 84; year 1993, No. 127, item 583 and No. 129, item 602; and 1994; No. 84, item 385) the periods of compulsory labour executed in mines during the period of obligatory army service in the Polish Armed Forces shall be considered as periods of payed social insurance premiums when establishing the right to old people's pension, and accounted for in double. The Act dated 2 September 1994, on special benefits and rights for soldiers performing substitute army service compulsorily employed in coal mines, quarries, and uranium ore plants (Journal of Laws No. 111, item 537) entered into force on 3 October 1994.

49. In the period covered by the present report the issue of taking up employment abroad was resolved. The above-quoted Employment and Unemployment Act provides in article 42 that employment of Polish citizens abroad with foreign employers shall be carried out on the basis of the international contracts entered into by the qualified authorities with Polish citizens who place these persons with foreign employers, and contracts entered into by Polish citizens with foreign employers. The Act also provides the basic principles for employment of foreigners within the territory of the Republic of Poland. In accordance with article 50 of this Act the employing institution or the physical person may employ foreigners or ask them to render services for money, provided they acquire a work permit from the provincial job centre. The permits specifying the kind of work executed or the position held shall be issued for a specified period of time for a specific person to work for the specified employer. The regional job centre issues such permits taking into account the situation of the job market and may withdraw the permit should the situation require such steps to be taken.

50. Employment on the basis of these regulations is entirely voluntary in character. The same principles have been adopted in the Employment and Unemployment Act dated 14 December 1994.

51. At present in Poland the problem of forced labour of detained persons which could be considered as a derogation from the principles of article 8 of the Covenant does not exist. In the present economic conditions characterized by the surplus of manpower employment of persons placed in penal institutions,

in view of the objective difficulties of finding a demand for their work, is entirely voluntary, on the whole consistent with the wishes of the prospective employees as concerns the nature of employment, and provided against pay. In accordance with the regulations of law in force (art. 49, para. 4, of the Punishment Execution Code) only the orderly jobs of an administrative and housekeeping character with loads not exceeding 30 hours per month shall be gratuitous.

52. The salary due to the sentenced person for his work shall be established in accordance with the rates in force or on the basis of the general terms of the contract. Moreover, it should be indicated that the periods of labour performed during the period of serving a sentence shall be considered social security premium-payed periods in the generally accepted meaning of the regulations concerning old age pensions for employees and their families. These periods shall also be included in the terms of employment on which the employee's rights depend.

53. In 1993, with an average of 62,538 detained persons only 14,499 persons were employed, including 1,063 persons arrested. In the employment of sentenced persons preference is given to those persons who are under obligation to pay alimony; however, the existing difficulties do not allow for employment of all those under the obligation to pay alimony. The same situation occurred also in 1994. For during this period, with an average of 62,593 detained persons, 15,798 persons were employed, including 924 persons arrested.

54. In accordance with article 23 of the Employment and Vocational Rehabilitation of Disabled Persons Act dated 9 May 1991 (Journal of Laws No. 46, item 201; No. 80, item 350; and No. 110, item 472), a possibility exists to set up special social rehabilitation units called Practical Rehabilitation Workshops for disabled persons totally unfit for paid work. The rehabilitation process carried out in these workshops includes among other things the development of vocational skills making it feasible in the future to take paid employment or vocational training. The overall cost of setting up and running the workshop is financed from the assets of the State Disabled Persons Rehabilitation Fund. Participation in the workshop classes is voluntary. The workshops can also be set up in penal institutions in order to create for disabled prisoners with a minor degree of disability the possibility to rehabilitate through work and increase their vocational qualifications.

Article 9

55. The Constitution of the Republic of Poland guarantees to its citizens the inviolability of the person. In accordance with article 87, paragraph 1, of the Constitution a citizen may be deprived of freedom only in cases specified by law.

56. The legal status presented in the previous report where it refers to arrest and detention on remand, and to the obligatory guarantees of court proceedings for persons arrested or detained on remand has not undergone changes until now. In 1992 the number of persons arrested and in penal institutions detained on remand (in detention pending trial) was 31,841.

In 1993 the number of persons detained on remand on the basis of the public prosecutor's decision was 29,513 and in 1994, 29,734 persons. In 1992 detention on remand was waived in the case of 6,513 persons, including repeal of detention on remand on the basis of the prosecutor's decision in the case of 5,392 persons, and as a result of a court decision in response to complaints detention awaiting trial was waived in the case of 1,121 persons. In 1993 the respective numbers were 6,810, 5,923 and 1,187; in 1994 they were 7,331, 6,182 and 1,149. In 1992 on the basis of the public prosecutor's decision there remained in detention (after appropriate extension by the court) from over 3 to 6 months 676 persons, from over 6 to 12 months 190 persons, and over 12 months 4 persons. In 1993 the numbers were 729, 277 and 6, and in 1994 791, 210 and 8.

57. In order to assess whether the application by the public prosecutor of a preventive measure in the form of detention on remand is justified, it is of vital importance to consider the number of persons in detention on remand who received judgements of acquittal, in relation to the overall number of arrested persons. In 1993 the index in different provinces was from 0.0 per cent to 2.9 per cent and only in one province reached 4 per cent. In 1994 240 persons in detention on remand were acquitted, which amounts to 1.2 per cent of the overall number.

58. The draft of the Code of Criminal Procedure worked out within the reform of the penal law provides among other things for exclusive jurisdiction of the court where it concerns the application of detention on remand in preparatory proceedings.

59. In view of the fact that the new codification of penal law shall require more extensive work, it has been acknowledged that adoption of more immediate amendments to some of the Acts including amendments to the Code of Criminal Procedure, is necessary. Relevant propositions for such amendments were passed to the Diet in April 1994, and are being examined by the Diet committees. Consideration is given, for example, among other things, to granting the court exclusive jurisdiction in applying detention on remand in preparatory proceedings. The relevant court for applying detention on remand in preparatory proceedings shall be the district court. Prior to applying detention on remand the court shall be under obligation to interrogate the suspect and allow the appointed defence counsel to take part in the action. In the draft under discussion it was accepted that the duration of detention on remand until the time the sentence is passed by the court of first instance shall not exceed one year and six months, and in cases of crime two years.

60. On 19 August 1994, the Mental Health Protection Act was passed (Journal of Laws No. 111, item 595). Under this Act a person suffering from mental disability can be committed without his/her consent to a mental hospital in the following circumstances:

(a) The behaviour of such a person suggests that due to his/her illness he/she is an immediate threat to his/her own life or the life and health of other persons;

(b) The behaviour of such a person suggests that in the event of not admitting him/her to hospital his/her mental condition shall considerably deteriorate;

(c) Such a person is unable to satisfy his/her own elementary needs, and it is justly anticipated that treatment in a psychiatric hospital might bring about improvement of his/her condition of health.

61. Moreover, a person whose behaviour suggests that due to mental disturbances he/she is a threat to his/her life or the lives of other people, and there are doubts as to whether he/she is suffering from a mental disease, he/she may be admitted to hospital without his/her consent in order to clarify the doubts. In all the above-specified events it is the guardianship court that decides about admitting such a person without his/her consent into a psychiatric hospital.

62. Irrespective of the above, the legality of admitting and having persons with mental diseases stay in psychiatric hospitals and nursing homes, the observance of the rights of these persons, and the conditions of their stay are the subject of permanent control by the court on the basis of the Act quoted in the foregoing.

63. Some legal circles in Poland have doubts as to the legality of punishment decreed by the boards for misdemeanour (regulatory offences) affiliated with the district courts. Observations in this regard were also heard from the Human Rights Committee when the previous report was under scrutiny. The Constitution in force includes the boards for misdemeanour (regulatory offences) among the administration of justice organs (art. 56, paras. 2 and 3). The boards are placed with district courts and the control of their decisions is carried out by court; supervision over the boards' activities is carried out by the Minister of Justice. The court control of the boards' decisions (regulatory offences) is based, among other things, on the fact that any party to the proceeding can make a complaint against a decision of the board in the form of a request for court proceedings to be instituted. In 1991 the boards for misdemeanour (regulatory offences) settled overall 403,678 cases, and 13,828 cases were transferred for judicial proceedings which constitutes 3.4 per cent. In 1992 482,274 cases in total were settled, and 20,648 cases (4.28 per cent) were transferred for judicial proceedings. In 1993 decisions were decreed in 561,014 cases, including 25,230 cases transferred for judicial proceedings (4.5 per cent). The number of cases settled by the boards for misdemeanour in 1994 remained the same. During this period the boards settled 550,168 cases, including 31,986 cases (5.8 per cent) transferred for judicial proceedings. The limited percentage of decisions against which the punished persons lodged appeals to court and the minimal influx of complaints to the Commissioner of Citizens' Rights against the decisions of these organs allow us (and the Commissioner of Citizens' Rights) to conclude that the adopted legal changes, specified in the foregoing, have served their function well, introducing definite guarantees of proceedings and improving the level of judicial decisions for misdemeanours (regulatory offences).

64. Further widening of the guarantees of proceedings within the scope under discussion is provided in the draft of the Code of Criminal Procedure and the Codes of Procedure in Misdemeanours (Regulatory Offences). According to article 500, paragraph 1, of the draft Code of Criminal Procedure, in the event the board acknowledges that the penalty of arrest or ban on driving automotive vehicles for a period exceeding six months should be decreed, the case shall be examined by court.

65. Polish law includes regulations that correspond to the resolutions of article 9, paragraph 5, of the Covenant. In accordance with articles 487 and 488 of the Code of Criminal Procedure each person whose arrest or detention on remand was evidently unjust may within a fixed time-limit lodge a request with the relevant regional court claiming for damages from the State Treasury for losses borne and compensation for harm incurred. Priority is given to the examination of such cases, and the proceedings shall be free of cost. The defendant also benefits from indemnity and compensation when as a result of amendment to a valid-in-law statement of judgement he has become acquitted or sentenced on the basis of a less severe regulation, or when proceedings against a person are discontinued, and therefore the punishment executed on him should never have been carried out.

66. The special regulation, on the basis of which indemnity is awarded from the State Treasury for the losses incurred and compensation for harm suffered is, as described in the previous report, the Act dated 23 February 1991 on Acknowledgement as Null and Void Decisions Delivered On Persons Repressed for Activities on Behalf of the Independent Polish State (Journal of Laws No. 34, item 149). In accordance with the amendment to this Act introduced by the Act dated 20 February 1993 (Journal of Laws No. 36, item 159) indemnity for damages suffered and compensation for harm incurred in the event a judicial decision is found invalid goes also to persons who at present or at the moment of death were domiciled in Poland, persons repressed by the Soviet prosecution agencies and judicial administration or out-of-court agencies, acting on the basis of the agreement concluded on 26 July 1944 between the Polish Committee of National Liberation and the Government of the USSR concerning relations between the Soviet commander-in-chief and the Polish State administration upon the entry of the Soviet army into the territory of Poland, for activities on behalf of the independent Polish State or due to such activities.

Article 10

67. In the previous report the fundamental changes in the Punishment Execution Code, and in some other regulations providing rules for proceedings involving persons deprived of liberty, aimed at adjustment of the principles of the Polish prison system in line with the provisions of the International Covenant on Civil and Political Rights and requirements of the 1987 European Prison Rules. In the years to follow the process was to be continued. From among the legal acts in this field which had not been discussed in the previous report special mention should be given to the ordinance of the Minister of Justice dated 31 December 1990, in force from 25 January 1991, amending the ordinance concerning rules and regulations on performing deprivation of freedom and executing detention on remand. These amendments were announced in the Journal of Laws 1991, No. 3, items 14 and 15. They have

introduced further liberalization of proceedings towards persons sentenced or in detention on remand, and most important the disciplinary punishment of the "hard bed" was discontinued. The changes under discussion enable the sentenced persons under obligation to pay alimony to obtain employment against payment, where they are granted priority, and also an increase of the remuneration for their work.

68. As at 31 December 1993, 61,562 persons were in the penal institutions and were under arrest, including 14,200 persons detained under remand and 47,542 sentenced persons. As compared to the years 1986-1987 (when the respective numbers were 90,000-100,000 persons), it is a considerable decrease. The number of imprisoned persons by the end of 1992 was 61,409. Only in 1989 after the application of amnesty was the number of persons imprisoned lower, amounting to 40,321 persons. However, by the end of 1994 the number of persons detained on remand, persons sentenced and punished amounted to 62,719 persons, including 15,453 persons detained on remand, 46,684 sentenced persons and 572 persons punished (by boards for misdemeanour - regulatory offences).

69. In the overall number of 62,719 imprisoned persons reported by the end of 1994, there were 944 women in the group of persons sentenced, in the group of persons detained on remand 503 women, and in the group of punished persons 16 women. The number of juveniles was: 3,032 among sentenced persons and 3,446 among those detained on remand.

70. At 31 December 1994, as in the previous years, the biggest group among the sentenced persons constituted persons relapsing into crime (25,170 persons).

71. The following problems are illustrative of changes in the conditions of detained persons during the period of transformation of the structural system in Poland:

(a) Permission for temporary leave from the penal institution. From 1991 the number of these permits systematically increased. In 1991 153,639 permits were issued (38,204 permits to leave the institution for 5 days and 115,435 for 24 hours). In 1992 the number was 261,045 permits (54,396 for 5 days and 170,649 for 24 hours). In 1993 54,234 permits to leave the institution for 5 days were issued (40,689 permits granted in the form of awards) and 210,403 permits for 24 hours (including 105,147 permits given in the form of awards). On the other hand, in 1994 45,402 permits were granted to leave the penal institution for 5 days (36,123 in the form of awards) and 186,218 permits to leave up to 24 hours (including 86,516 permits in the form of awards);

(b) Visits. Regular visits to detained persons are undertaken both by the members of the "Patronat" Prison Association and by independent persons rendering spiritual and heart-to-heart services;

(c) Study. In the school year 1992/93 88 different types of schools were in operation; 4,050 sentenced persons were included in the programme of study, with 704 in primary schools, 2,756 in basic vocational schools, 487 in intermediate vocational schools and secondary vocational schools.

Twenty-three graduates of the prison secondary schools took up studies in schools at university level, with 10 among them still serving their sentence. Moreover, 1,318 sentenced persons took training courses. In total 59 training courses were carried out in 9 fields of specialization. The majority of these courses permitted the persons attending them to obtain full vocational qualifications. In the next school year (1993/94) there were 87 different kinds of schools in operation. The number of sentenced persons covered by this activity amounted to 4,025, including 768 persons in primary schools, 2,433 in basic vocational schools, and 491 persons in intermediate vocational schools. In the school year 1993/94, as in the previous period, 56 training courses were in operation, and 1,318 participants were trained there;

(d) Autonomy of the sentenced persons. In recent years different forms of self-government activities of the imprisoned persons' habitat come to life. This is particularly so in the field of cultural and sporting activity. In many penal institutions there operate councils for sport and culture. In schools pupils' self-governments have been appointed. It should be specially noted that in five penal institutions sentenced persons' spokesmen have been appointed;

(e) Medical care. Basic medical care for imprisoned persons was provided by 193 dispensaries with infirmaries and dental surgeries. Hospital treatment is provided to imprisoned persons in 14 prison hospitals and 39 hospital wards. During 1993 1,132,966 dispensary consultations were provided, while overall 8,693 patients were provided hospital treatment. It should be indicated here that the majority of dispensary consultations and physiotherapeutic treatments were provided to imprisoned persons in national health service institutions. In turn, in 1994 1,158,982 consultations were provided to imprisoned persons in penal institutions' dispensaries and 26,413 dispensary consultations in the different medical care institutions of the so-called national health service. Prison hospital treatment was provided in 1994 to an overall number of 8,602 patients. A favourable opinion of the medical care provided to imprisoned persons has been expressed by the Commissioner of Citizens' Rights as the result of the visits payed to the penal institutions. Incidental insufficiencies ascertained by him in this field were not of a general nature, but resulted from subjective causes occurring in some penal institutions;

(f) Postpenitentiary support. In 1993 postpenitentiary support of different kinds was provided to 49,528 imprisoned persons and to their families. Overall costs of the postpenitentiary aid during that time amounted to 4,751.4 million zlotys. The aid was provided in different forms, and most frequently concerned money allowance, purchase of clothes, credit tickets to pay the fare, and food. Cooperation of the prison administration with the relief institutions and organizations was continued. With their help 269 persons were placed in hospices for the homeless, 156 persons were given lodgings, 47 persons were placed in social relief homes, and 50 persons obtained employment after being released from penal institutions. The overall number of persons leaving penal institutions who benefited from the support provided by the social relief centres amounted to 21,219 persons, that is 6,279 persons more than in 1992. In 1994, however, the overall value of the postpenitentiary support provided to the detained persons amounted to 6,048,900,000 zlotys (in old currency), including financial aid worth

3,715 million zlotys, clothing and aid in kind 2,333.9 million zlotys; 35,292 persons took advantage of financial aid, and clothing and aid in kind were provided to 15,757 persons.

72. In accordance with article 27 of the Penal Executive Code supervision over the legality and execution of the penalty of detention, arrest and detention on remand is performed by penitentiary judges and public prosecutors. This supervision is particularly marked by visitations and inspections of penal institutions and arrests. In 1994 penitentiary judges carried out 118 visitations of penitentiary units (in 1993 - 128). The control carried out by the judges concerned above all issues as the proper categorization and placement of the imprisoned, their living conditions, their health conditions and the arrangements provided for their leisure time. The judges also heard complaints and requests from the detained persons. In 1994 penitentiary judges delivered 155,931 decisions and judicial decisions (in 1993 - 164,900).

73. In 1994 public prosecutors carried out 231 visitations and inspections in the penal institutions (in 1993 - 274). The public prosecutors' control covered in particular such matters as the legal aspect of imprisonment, observance of the rights and obligations of the imprisoned persons and the regulations concerning safety, and the application of coercive measures. Moreover, in 1994 public prosecutors executed 1,238 visitations and checks in the police lock-ups (in 1993 - 1,174) and 34 control actions in psychiatric hospitals (in 1993 - 51).

74. As concerns juveniles under 17 years of age at the time of committing a punishable act, preventive measures are applied on the basis of the Proceedings in Case of Juveniles Act dated 26 October 1982 (Journal of Laws No. 35, item 228, and Journal of Laws 1992, No. 24, item 101).

75. In the period covered by the report in the judicial decisions of the court the tendency was continued to resocialize the juveniles in their natural environment. In 1992 1,178 judicial decisions were delivered for placement in correctional houses, including 576 juveniles for whom this decision was absolute, and 1,142 juveniles for whom the decision was delivered with temporary suspension of the placement and application within the probation period of one of the educational measures. In 1993 the overall number of measures of isolation applied was a little smaller and amounted to 1,524, including 517 juveniles against whom the absolute placement in correctional houses was applied, and 1,007 juveniles for whom the measure of temporary suspension was applied. The situation was similar in 1994. During this period 1,585 judicial decisions were delivered concerning placement of juveniles in correctional houses, including 507 decisions for absolute placement and 1,078 decisions for placement with temporary suspension.

76. In Poland the Department of Justice runs 27 correctional houses with 1,370 places. Some of them are houses for juveniles requiring direct educational supervision and institutions carrying out educational work in an open environment.

77. In correctional houses, most open to the outside world, the educational work is carried out to a considerable extent outside the house. For example, in schools and places of work outside the correctional houses general and vocational training is carried out, and also classes in cultural education, sports and recreation. Inside the houses the aim is to create an educational atmosphere based on family standards. Because of this the wards may use their own clothes and everyday personal objects. They may receive in the house persons they are close to and colleagues; they may dispose of their own money. Moreover, they benefit from numerous passes and leaves of up to 42 days, which may even be extended during the holiday season.

78. A substantial number of juveniles against whom a correctional measure has been applied are highly demoralized persons. Among the juveniles put into correctional houses are more and more persons who behave in a ruthless, savage and highly aggressive manner. For example in 1991 the family courts examined cases of 16 juveniles perpetrators of homicides and 660 perpetrators of robbery. In 1993 cases of 20 juveniles perpetrators of homicides were examined, and 830 juveniles perpetrators of robbery. Moreover, in 1993 cases of 60 juveniles perpetrators of rape were examined.

79. In the years 1991-1994 grim mutinies occurred in the correctional houses (in 1910 - 10; in 1992 - 4; in 1993 - 3; in 1994 - 3), when the premises were smashed and aggressive behaviour was demonstrated towards co-wards and house staff. Therefore, introduction of the process of resocialization, and in particular elimination of the causes and sources of discontent, requires both from the educators and the teachers of those institutions high qualifications and an ability to cope with difficult youths.

80. In the supervision of the course of the resocialization process of the juveniles constant attention is given to and thorough analysis is undertaken of the rights of these persons. Such analysis is carried out both by the judges of the family courts and by the employees of the educational supervisory board of these institutions. In all cases of infringement of such rights, disciplinary or legal measures are taken against the guilty party.

81. As mentioned in the information concerning article 2 of the Covenant, in 1993, some of the houses for juveniles were under control of the Commissioner of Citizens' Rights, with the aim of establishing the observance of the rights of the wards placed in these institutions. The Commissioner of Citizens' Rights payed attention among other things to the need for examining the situation in those institutions where incidents of infringement of corporal inviolability of wards were confirmed, and to the need for rules concerning application of direct coercion measures. Relevant solutions in the latter were announced in the draft of the act amending, among others, the Proceedings in Case of Juveniles Act. Moreover, as concerns the reported incidents of infringement of corporal inviolability of wards, scrupulous analysis and appraisal of work performed in the institutions where such incidents occurred were carried out. In all cases where it was confirmed that such unlawful actions had occurred, disciplinary measures were applied, including dismissal from employment in the case of persons guilty of such infringements.

Article 11

82. The Polish legal system does not include legal norms allowing for imprisonment only and exclusively for the reason of not being able to meet contractual obligations.

Article 12

83. The legal regulations presented in the previous report setting rules and conditions in the event of departure from Poland or entry into Polish territory have not undergone any changes.

84. In 1992 passports giving the right to cross the border were granted to 2,724,574 persons. During that period passport applications were rejected only in 471 cases, which constitutes 0.02 per cent of the overall number of applications submitted. For example, in 1993 passports were granted to 1,635,181 persons, while 494 passport applications were rejected, which constitutes 0.03 per cent of the applications. Therefore, on the basis of these data it can be ascertained that in principle all persons who submit an application receive passports.

85. The rules and conditions of granting foreigners entry visas to the Republic of Poland are set out in the Aliens' Act dated 29 March 1963 (Journal of Laws 1992, No. 7, item 30). According to the statistical yearbooks for the years 1991 and 1992 alien migration to Poland (change of permanent residence) looked as follows:

(a) Immigration 1991: 5,040 persons; 1992: 6,512 persons;

(b) Emigration 1991: 20,977 persons; 1992: 18,115 persons.

86. The observance by Poland of article 12 of the Covenant is confirmed by the number of persons crossing the border of the Republic of Poland. For example, in 1993 overall 185,552,700 persons crossed the border of the Polish State: incoming to Poland were 93,002,075 persons, and outgoing were 92,550,625 persons. In the first six months of 1994 93,571,162 persons crossed the border: incoming to Poland were 46,705,051 persons and outgoing were 46,866,111 persons.

Article 13

87. Observation in Poland of article 13 of the Covenant pertaining to conditions and requirements which in spite of being observed allow expulsion of an alien from Polish territory is secured by the above-specified Aliens' Act. The Act was amended by the Act dated 19 September 1991 (Journal of Laws No. 119, item 513) supplementing it with regulations allowing heads of provinces to apply to aliens such measures as "placing them in guarded centres" or "in custody awaiting expulsion" (art. 15, para. 4 and art. 16, paras. 1-3 of the Act).

88. As a result of the pronouncement made by the Commissioner of Citizens' Rights the Constitutional Court recognized these regulations as inconsistent with the Constitution and on the basis of the provisions of the International Covenant on Civil and Political Rights legislative proceedings are being carried out in the Diet to alter these regulations.

Article 14

89. The constitutional principle binding in Poland that all persons shall be equal applies also to the equal rights of all persons before the courts.

90. The 1989 reform of the Polish judicature was described in detail in the previous report.

91. By the Act dated 15 May 1993, a regulation (art. 59/1) was introduced into the Organization of Justice Administration Act allowing the President to dismiss a judge upon a motion from the National Board of the Judicature, should he act in defiance of the principle of independence. In accordance with this regulation it is the disciplinary court which, upon motion of the Minister of Justice or of the board of the appellate court or of the regional court, would investigate whether any action in defiance of the principles of independence has occurred. Deeds and circumstances throughout the entire period of holding the post of judge constituted the basis for appraisal for the disciplinary court. The ratio legis of accepted solutions had to be based on the creation of legal circumstances allowing removal from the administration of justice of judges who during the socialist period violated the principle of independence. Moreover, in order to strengthen the position of the Minister of Justice this Act has restricted the right to general assemblies of judges and boards of the courts of law in matters concerning appointment or dismissal of presidents and deputy presidents of courts of law.

92. In the decision dated 8 November 1993, the Constitutional Court ascertained that both article 59/1 and the regulations amending the Law on Organization of Justice Administration, which gave the Minister of Justice power to appoint or dismiss the president of the appellate court and of the regional court against the stand of the usual majority of the general assembly of judges of the competent court, and excluded the participation of the judges' self-government in the process of appointing and dismissing the deputy president of the appellate court and of the regional court and the president and deputy president of the district court, was against the relevant regulations provided in the Constitution. The Diet adopted on 24 June 1994 the Act (Journal of Laws No. 91, item 421) which abrogated article 59/1, and appropriately amended the regulations of the Law on Organization of Justice Administration concerning appointment and dismissal of presidents and deputy presidents of courts of law. In view of the fact that this Act was adopted after expiry of the period of time during which the Diet could adopt it, work is at present being carried out to introduce yet another amendment consistent with the Constitutional Court's decision.

93. As at 31 December 1994, there were employed in the courts a total of 233 judges of the appellate court, 1,714 judges in the regional courts, 3,857 judges in the district courts, and 744 associate judges in the district courts. In 1994 562 persons were appointed to the post of judge, and

433 persons to the post of associate judge. From among the persons appointed to the post of judge there were 21 judges of the appellate court, 149 judges to the regional courts and 392 judges to the district courts. In 1994 193 persons left the post of judge. The reason for their departure is that in some other areas of the legal profession better financial conditions are available. Moreover, in the given period 36 persons left the post of associate judge. However, there were no incidents of dismissal of judges in disciplinary proceedings, particularly in view of the above-indicated article 59/1 on the organization of justice administration, and no proceedings were undertaken in this regard.

94. In the High Administrative Court in 1993 136 judges were employed, including 9 judges employed part-time. Twenty-three judges were appointed, and three judges retired or left due to disability. By the end of 1994, on the other hand, 157 judges were employed in this court. During 1994 28 judges were appointed, and 7 persons left.

95. The provisions in Polish law concerning access by every person to a fair and public hearing by a competent, independent and impartial court have been discussed in the previous report. In the resolution dated 11 March 1994, the High Court, in view of article 14 of the Covenant, expressed the principle that every man has the right to have his case considered by an independent and impartial court. In turn, in the resolution dated 21 December 1993, the High Court acknowledged that the right to have the case heard in court - which is the foundation of civil rights - can under no circumstances be interpreted in a restrictive manner, and that recourse to law may be excluded only on the basis of regulations having the rank of an Act, while doubtful cases, where there exists no absolute certainty concerning such exclusion, should be decided in favour of recourse to law.

96. The right of the parties to appeal to a court of higher instance is given great weight in view of the already mentioned and considered amendment to the Code of Criminal Procedure and to the Code of Civil Procedure. The draft of the amendment considers introduction, in place of the present extraordinary appeal against final sentence, the institution of cassation to the High Court as an extraordinary measure of appeal from valid-in-law judicial decisions. In view of the fact that the right to lodge cassation shall serve parties, the administrative element shall be eliminated when deciding about lodging an extraordinary appeal to the High Court.

97. As at 31 December 1994 7,284 persons were entered on the list of lawyers, including 4,308 lawyers active in the profession. The overall number of law trainees at that time amounted to 372 persons.

98. The number of lawyers who run their own law offices has systematically increased. In 1994 the number was 3,147, while in 1991 it was only 791. At the same time the number of lawyers exercising their profession in lawyers' associations has decreased. In 1994 the number was 851 persons, while in 1991 it was 3,115.

99. The draft of the Code of Criminal Procedure corresponds to international standards, and in particular to the provisions of the International Covenant on Civil and Political Rights. In the draft the right of the defendant to

defend himself is put in the foreground. The regulations legally controlling the possibility for the defendant to consult his defence counsel without other persons being present are provided by this right. Legislative work is being carried out on the draft amending the Act on the Legal Profession and the Act on Legal Counsels.

Article 15

100. The principles of responsibility provided for in this article have not changed as compared with the data presented in the previous report. In the verdict dated 26 July 1991, the High Court underlined that the standards of the democratic State require that all the standards of repression (not only of criminal law) be subject to the nullum crimen sine lege principle resulting from article 15 of the Covenant.

101. It should be stressed that the High Court, when investigating the extraordinary appeals of the cases concerning the martial law period and delivering verdicts of not guilty, referred directly to article 15 of the Covenant. An example is the verdict dated 17 October 1991, where the High Court ascertained that the interdiction specified in article 15 of the Covenant belongs to the category of international law standards which in the domestic legal order of the States parties to the Covenant qualify for direct application (the so-called self-executing standards).

Article 16

102. The regulations guaranteeing that everyone shall have the right of recognition everywhere as a person before the law have been extensively discussed in the previous reports, and have not undergone any changes.

Article 17

103. At present no incident of infringement of the human rights guaranteed under article 17 of the Covenant and discussed in the previous report, have been reported.

104. In accordance with article 24 of the Civil Code anyone whose personal property is threatened can defend his right before the common court. For example, in 1991 782 cases of this kind were entered into the regional courts, in 1992 1,029 cases, in 1993 1,075 cases, and in 1994 1,199 cases.

105. In matters connected with the right to privacy a few cases were filed with the Commissioner of Citizens' Rights. Attention was called among other things to the insufficient protection of the professional secrecy of medical doctors by disclosing during the administrative proceeding the statistical number of the disease placed on the sick-leave certificate of a given person, which allows for establishing the name of the disease. The matters received elucidation from the organs concerned.

Article 18

106. As mentioned in the previous report, the Guarantee of Freedom of Conscience and Religion Act dated 17 May 1989 provides the possibility to set

up churches and other religious associations by every person wishing to do so. The procedure requires a declaration of adherence to be delivered and an entry into the register to be made.

107. As at 1 July 1994, religious activity was carried out in Poland by about 100 Churches and other religious associations. Some of them (15 Churches) have their own legal status regulated by the Act. The others have so far used the procedure of entry into the register. This double form of regulation is used merely to ease the settlement of the legal condition of the new religious associations. It does not, however, cause any differences in the rights of these associations to perform their religious functions.

108. In the previous report the Relationship of the State with the Catholic Church of the Republic of Poland Act dated 17 May 1989 was discussed at length. Its tremendous importance as concerns the freedom of conscience and religion results from the fact that decidedly the majority of the Polish population belongs to this Church. By the Act dated 4 July 1991 (Journal of Laws No. 66, item 287 and No. 95, item 425), the relationship between the State and the Polish Autocephalous Orthodox Church was regulated. The Act specifies the terms of the relationship between the State and this Church, including its legal status and assets. On 13 May 1994, the Diet adopted the Acts on the Relationship between the State and the Evangelical-Augsburg Church in the Republic of Poland (Journal of Laws No. 73, item 323) and on the Relationship between the State and the Evangelical Reformed Church in the Republic of Poland (Journal of Laws No. 73, item 324). In these Acts, as in the above-mentioned two legal Acts, the legal status, the organizational condition and the assets of both of the Churches have been specified. On 28 June 1994, the Government accepted and passed to the Diet the drafts of the acts on the Relationship between the State and the Evangelical Methodist Church, the Relationship between the State and the Christian Baptist Church, and on the Relationship between the State and the Seventh Day Adventist Church. Legislative work is being carried out on the draft of the members of the Diet on the Act concerning the Relationship between the State and the Polish Catholic Church.

109. On the basis of the above-specified Acts on the relationship with different Churches all persons in the armed forces, and also their families, benefit from the absolute freedom to manifest their religious practices, depending on their wishes. Also, soldiers in active army service are provided with the opportunity to participate in services organized in churches or other places of worship and chapels of a given religion.

110. According to the regulations provided in the specified Acts persons detained on remand may manifest their religious practice and observe worship by listening to the mass transmitted over the mass media, and also - should the conditions allow - take advantage of individual religious ministrations. Sentenced persons are provided with the opportunity to exercise religious practices and participate in services carried out on Sunday or during Church holidays of a given religion in an appropriately adapted room in the institution they are in. Should, however, these persons be unable to participate in such services, then at their request they should be provided

with the possibility to hear the service transmitted by mass media. The same arrangement applies to the Acts concerning juveniles who are in correctional houses and juvenile shelters.

111. Such rights are vested in members of other Churches and religious associations, in accordance with the principle of equality of all religions observed in Poland. For example, within the penal institutions the manifestation of religious beliefs is provided among other religions to the Jehovah's Witnesses, members of the Pentecostal Church, the Seventh Day Adventists, Baptists, etc.

112. At present in all the penal institutions there are 45 chapels with 3 under construction, and in one penal institution the church is undergoing repairs. Ministration to persons deprived of freedom is provided by 233 priests helped by about 150 secular teachers of religion.

113. The Educational System Act dated 7 September 1991 (Journal of Laws No. 95, item 425; Journal of Laws 1992, No. 26, item 113 and No. 56, item 254; Journal of Laws 1993, No. 127, item 586; and Journal of Laws 1994, No. 1, item 3 and No. 53, item 215) mentioned in Part I of the present report provides in article 12, paragraph 1, that in view of respecting the parents' right to religious education of children, public secondary schools organize at the parents' request religious education, and public secondary schools at the request of parents or pupils themselves; after coming of age the decision concerning religious education shall be taken by the pupils themselves. In accordance with the powers included in this Act the Minister of Education, in agreement with the Catholic Church authorities and the authorities of the Polish Autocephalical Orthodox Church and other Churches and religious associations, issued on 14 April 1992 the ordinance concerning the conditions and manner of organizing religious education in public schools (Journal of Laws No. 36, item 155 and Journal of Laws 1993, No. 83, item 390). The ordinance indicates that religious and moral education are voluntary, for it is carried out only for the pupils whose parents or legal guardians express the wish, and in the secondary schools for pupils whose parents or the pupils themselves express such a wish. The ordinance confirms the statutory rule that after coming of age the pupils themselves shall decide about their religious and moral education. Such request shall be made simply in the form of a declaration. The ordinance stresses the fact that participation or non-participation in the religious and moral education at school cannot provide grounds for discrimination against anyone and in any form whatsoever. The mark in religious or moral education shall not effect the pupil's promotion to the next grade.

114. Similar principles were specified in the ordinance of the Minister of Education dated 3 July 1992 regarding terms and conditions of securing the right to manifest religious practices for children and youth in educational institutions and child-care institutions, and in camps and summer camps (Official Gazette No. 25, item 181).

115. It should be noted that the above-specified ordinance of the Minister of Education dated 14 April 1992 was, upon a motion by the Commissioner of Citizens' Rights, subjected to investigation by the Constitutional Court. By a decision dated 20 April 1993, the Constitutional Court justified in part the

opinions of the Commissioner of Citizens' Rights and acknowledged that some of the provisions of the ordinance in question were in contradiction to the acts issued by the Minister of Education concerning religious education, and in particular to the Educational System Act. As consequence of the decision of the Constitutional Court the ordinance in question was amended by the ordinance of the Minister of Education dated 25 August 1993 (Journal of Laws No. 83, item 390).

116. The principle that recruits designated for basic army service in civil defence or for army training may because of their religious beliefs or moral principles come forward with a written application for substitute service, is observed. In the event the application is rejected, the recruit has the right to lodge a complaint with the court of administration. At present, upon amending the General Obligation to Defend the Republic of Poland Act dated 21 November 1967 (Journal of Laws 1992 No. 4, item 16) the period of substitute service was curtailed from 36 months to 24 months, and for university graduates from 24 months to 9 months.

117. In 1992 permission to undertake substitute service was granted to 4,400 recruits and in 1993 to 2,500 recruits, which amounts to 75 per cent of the overall number of persons who applied to be transferred to such service. Complaints concerning rejection by the recruiting boards of the argument that a recruit needs to be transferred to the substitute service on religious or moral grounds have also been brought before the Commissioner of Citizens' Rights, who brought them to the attention of the Minister of the Interior, who supervises the recruitment procedure. In the report for the period 13 February 1993 to 12 February 1994, the Commissioner of Citizens' Rights reported a decrease in complaints received in connection with the right of substitute service. According to the Commissioner, this may be due to the improved selection of the members of recruiting boards and more thorough analysis of the recruits' applications for transfer to substitute service. It is estimated that at present all justified applications of recruits for transfer to substitute service are being approved.

Article 19

118. The administrative restrictions of freedom of expression, ideas and opinions that took place in Poland until 1990, presented in the previous report, belong to the past.

119. In the previous report the positive results of the revocation in 1990 of the Censorship Act was noted. Moreover, the report described in detail the course of the changes executed in the years 1989-1990 to the Press Act dated 26 January 1984. In accordance with this Act the press shall benefit from freedom of expression and shall carry into effect the citizens' rights to genuine information, to receive information concerning public life, and to social control and criticism.

120. Newspapers and magazines are subject to registration in the regional court. The court may refuse the registration should the application not meet the formal requirements or should the granting of the registration infringe the copyright of an existing title. According to the statistical yearbook, as at 31 December 1992, the register included the overall

number of 7,484 newspapers and magazines, and as at the end of 1993 in total 9,113 newspapers and magazines were registered. As at the end of 1994 the register showed as many as 10,716 newspapers and magazines.

121. The Radio Broadcasting and Television Act dated 29 December 1992 secures the right of the public radio broadcasting and television units who obtain a licence to broadcast radio and television programmes. In accordance with the Act the radio or television broadcaster shapes the contents of the programme independently and bears responsibility for it. The Act provides that broadcasts cannot propagate activities contrary to law, contrary to the Polish State, and attitudes and ideas contrary to the moral standards and well-being of its citizens. Above all they cannot interfere with the religious beliefs of the receivers or, because of the time of the broadcasting (between 6.00 and 23.00 hrs), threaten the psychic, emotional or physical development of children and youth. The regulation of the Act under discussion, which provides the above-mentioned ban on infringement in the broadcasts of the religious beliefs of listeners, has become - upon a motion by a group of members of the Diet - the object of an interpretation of the Constitutional Court. This group of members of the Diet questioned whether the requirement to respect Christian values in public radio and television broadcasts was in accordance with the Constitution. The Constitutional Court, by decision dated 7 June 1994, recognized that the provision of the Radio Broadcasting and Television Act including the demand to respect in public radio broadcasting and television programmes Christian values which are in line with the universal moral principles is concordant with the principle of a democratic lawful State expressed in article 1 and with the principle of equality set out in article 67, paragraph 2, of the Constitution. The Constitutional Court acknowledged also as being concordant with the above-quoted provisions the ban on infringing in the broadcasts the religious beliefs of the listeners.

122. On the basis of the Act under discussion the National Board for Radio Broadcasting and Television was set up to safeguard the freedom of speech on radio and television, the independence of the broadcasters and the interests of the listeners and to ensure the pluralistic character of radio and television broadcasting. Should a specific radio or television broadcast infringe the Act, the resolutions of the National Board or the licensing rules and regulations, the president of the Board can, on the basis of the Board's resolution, issue a decision ordering the broadcaster to cease actions of this kind. He may also fine him or even withdraw the licence. The competence of the court resulting from this Act as concerns protection of the rights of broadcasters has been presented in the discussion of article 2 of the Covenant.

123. The Copyright and Related Rights Law dated 4 February 1994 (Journal of Laws No. 24, item 83), regulates matters connected with the protection of the law of copyright and of some other personal rights. In particular, the creator's personal and property copyrights are ensured by this law. The creator whose rights have been infringed may sue for protection of those rights, compensation for damages and, in the event of infringing property rights, appropriate remuneration. The object of the regulation under the Act is also to protect the likeness of a person and of correspondence received. Under the Act the dissemination of a likeness (apart from the cases specified under this Act) of a person requires permission from the person who is

represented in the image. Permission is also required from the person concerned for publication of correspondence addressed to this person. Also, in both cases, persons whose personal rights have been infringed have the right to bring actions before the court.

Article 20

124. The conditions have not changed since the time of the previous periodic report.

Article 21

125. The principle specified in the Act dated 5 July 1990 on Right of Assembly (Journal of Laws No. 51, item 297) and described in detail in the supplement to the previous report, of free access to the right of assembly corresponds fully to the provisions of article 21 of the Covenant. A situation that occurred in connection with the organization and holding of a gathering provided grounds for the Commissioner of Citizens' Rights to apply to the Constitional Court to determine whether, in view of the provisions of this Act, the commune administrative organ must accept the fact of the gathering being organized by certain persons in a certain place and at a certain time and prohibit the gathering, when the circumstances provided for in the Act take place, or whether it could specify some other place or time for the gathering. The Commissioner expressed the opinion that the civil right to assembly includes not only the right to take a decision on the organization of a collective act of will (protest, support, etc.), but also the right to choose freely the place and time of the assembly. The case was considered by the Constitutional Court on 16 March 1994. In the adopted resolution the Constitutional Court resolved that the right to assembly is of strictly binding force and cannot be interpreted in a broadened manner. Hence, as the Act did not specifically give the administrative body the right to amend the conditions of assembly (time and place), it should be accepted that there is no legal basis to issue such a decision. Therefore, even in a decision prohibiting an assembly from taking place, the commune administrative body cannot specify another place and time of a public gathering other than those announced in the organizer's notice.

Article 22

126. The legal status presented in the previous report has not undergone any changes.

127. As at 31 December 1992, there were overall 170 political parties registered, and by the end of 1993 the number had increased up to 288 parties, whereas by the end of 1994 249 political parties were included in the register. As concerns associations, by the end of 1992 there were 25,824 associations registered, and by the end of 1993 28,650. At the end of 1994 the register showed 31,017 associations. In principle the number of trade union organizations remained on an even level in the years 1992-1994 (at 31 December 1992 - 23,249; at 31 December 1993 - 23,013; at 31 December 1994 - 23,288 organizations). However, the number of employers' organizations increased (at 31 December 1992 there were 64 organizations registered, at the end of 1993 105, and at the end of 1994 the number had increased to 138). The

increase concerned also the number of interdepartmental organizations of trade unions (at the end of 1992 36, at the end of 1993 56; at the end of 1994 84). The number of all-Poland federations of trade unions amount to 164 at the end of 1992 and 163 at the end of 1993 and 1994. Moreover, at the end of 1993 and 1994 the register showed six all-Poland organizations of trade unions.

128. The proceedings in fulfilment of the Act dated 25 October 1990 concerning reimbursement of the property lost by trade unions and social organizations in connection with the introduction of martial law have not been completed (the Act was discussed in the previous report). The obstacle is that the unions are unable to meet the demands addressed to them, which are connected with the claims for reimbursement of property, because of the extent of these claims (securing the real value of the liability on the day of actual reimbursement). In order to solve this problem amendments to the above Act have been proposed by groups of members of the Diet which aim at securing the lost property for the trade unions and social organizations by imposing the obligation of reimbursement on the entities guaranteeing solvency (government organs and works within the territory which the trade unions operated). Nevertheless, the proposals give rise to many doubts. Opinions are heard that their adoption might cause interference in the sphere of economic freedom, as in most cases the works to which the proposal would relate are independent business entities, very often privatized, transformed into companies, etc. and also they would constitute a serious infringement of the stability of law.

Article 23

129. The provisions included in article 23 of the Covenant find confirmation in the Constitution of the Republic of Poland and in some other relevant Acts discussed in the previous report.

130. In 1991 233,206 new marriages were entered into. In 1992 the overall number of marriages entered into was 217,240, and in 1993 the number of marriages entered into was 207,700. As indicated in the previous report, there has occurred a gradual decrease in the number of marriages.

131. In 1992 57,793 cases of divorce were filed with the regional courts. In 1993 55,502 cases were filed, and in 1994 69,683. In 1992 32,024 marriages were dissolved by divorce, in 1993 27,891 and in 1994 31,574.

132. Minor children whose parents have been deprived of their parental authority or whose parental authority was limited remain under constant court surveillance. In the event an irregularity occurs in the course of the educational process, appropriate steps are taken without delay. The provisions of the Ordinance of the Minister of Education dated 21 February 1994 on different kinds of organizations and principles of operation of the public educational and correctional institutions (Journal of Laws No. 41, item 156) are of fundamental importance here, as they constitute the basic legal act in the field of child and youth care.

133. In 1992 15,910 minor children whose parents had been deprived of their parental authority and 135,988 children whose parents had been given limited parental authority remained under the care of the family courts. In 1993 there were 14,943 minor children in the first group and 134,495 in the second.

In 1994, in the first group there were 14,636 minor children and in the second 134,097. The outstanding role in the field of surveillance of minor children who require protection under the family courts is provided by professional and non-professional probation officers. In 1993 there were overall 1,094 professional probation officers and 10,314 non-professional probation officers, and by the end of 1994 1,195 professional probation officers and 9,793 non-professional probation officers.

134. The contents of article 23 of the Covenant are also fulfilled by providing parents inefficient in bringing up children, single parents and poverty-stricken families with legal possibilities to obtain educational, pedagogical, psychological and financial assistance. This activity is provided for in the Educational System Act and the executory provisions based on the Act, among which the following should be mentioned: ordinance of the Council of Ministers dated 4 August 1993 on conditions of allocating financial assistance to pupils (Journal of Laws No. 74, item 350), ordinance of the Council of Ministers dated 21 October 1993 on foster families (Journal of Laws No. 103, item 470), ordinance of the Minister of Education dated 1 August 1993 on adoption and foster centres (Journal of Laws No. 84, item 394), and ordinance No. 15 of the Minister of Education dated 25 May 1993 on rules for providing psychological and pedagogical assistance (Ministry of Education Official Gazette No. 6, item 19).

Article 24

135. The tenet of equality of all children, regardless of their race, colour, sex, language, religion, national and social origin, property or birth, lies at the base of the legal regulations concerning every child, and is strictly observed whenever law is applied. The ratification by Poland of the Convention on the Rights of the Child has had a substantial impact on the creation and observance of law aimed at the protection of the rights of every child. This was discussed in the previous report.

136. The well-being of the child is above all the responsibility of the parents and is ensured within the framework of the parental authority over the child. This responsibility includes among others, the obligation to pay towards the child's upkeep and upbringing. In the event one of the spouses does not fulfil his/her obligation to defray the child's upkeep and upbringing, he is encumbered with the obligation to pay maintenance. In 1993 183,090 valid-in-law decisions to pay maintenance were issued, including 158,047 valid-in-law decisions concerning the obligation to pay maintenance for children. In 1994 the numbers were 182,589 valid-in-law decisions in proceedings for maintenance, including 158,659 decisions to pay maintenance on behalf of children.

137. The indispensable network of child-care establishments was set up in the educational system. In this system there operate institutions which provide childcare to children from their birth to their coming of age (for example crèches, kindergartens, infant orphans' homes, orphans' homes run by families, guardianship emergency centres, special care educational homes, school dormitories, youth community centres, sociotherapy centres, etc.).

138. Vital importance is given to the resolution of the High Court dated 12 June 1992 adopted in connection with the occurrence in Poland in recent years of an increasing number of cases connected with the adoption of Polish children by applicants in permanent residence abroad. In this resolution the High Court acknowledged that adoption of a Polish child - which involves removal of the child to another country - may take place in the event no possibility exists to place the child in a foster or adoptive family in Poland in the equivalent conditions. This procedure - the High Court underlined - gives precedence to the well-being of the child, provided for in article 20, paragraph 3 and article 21 (b), of the Convention on the Rights of the Child.

139. According to the High Court special attention should be given to the formulations of the Convention which indicate that every child should for its full and harmonious development be brought up in a family environment, in an atmosphere of happiness, love and understanding, that it should be fully prepared for life in the society, yet at the same time proper attention should be given to the importance of tradition and the cultural values of each nation for the protection and harmonious development of every child.

140. The concept of appointing a spokesman on the rights of the child is considered. Such a spokesman, according to the suggestions put forward, would deal with each child up to the age of 18, would be his/her representative and would supervise the work of the institutions dealing with children. In the office of the Commissioner of Citizens' Rights there operates a special section dealing with the protection of the rights of the child. In matters concerning children the Commissioner of Citizens' Rights, taking into account the difficulties children face when claiming their rights, and also problems of coordination of steps taken on the part of the organizations acting on behalf of children, very often undertakes appropriate actions in those matters at his own initiative.

Article 25

141. In the previous report the process of setting up in Poland a new legal system enabling every citizen to take part in full and without any restrictions in the conduct of public affairs was presented. Within the framework of this process, among other things, the legal grounds for carrying out free and democratic elections for the President of the Republic of Poland, the Diet and the Senate, and also for the institutions of local self-government, have been set. Reference is made to the Election of the President of the Republic of Poland Act dated 27 September 1990 (Journal of Laws No. 67, item 398), the Electoral Regulations to the Republic of Poland Diet Act dated 28 June 1991 (Journal of Laws No. 59, item 252), the Electoral Regulations to the Republic of Poland Senate Act dated 10 May 1991 (Journal of Laws No. 58, item 246), and the Electoral Regulations to the Communal Councils Act.

142. As already mentioned in Part I of the report, on 28 May 1993 a new act was passed on the Electoral Regulations to the Diet of the Republic of Poland (Journal of Laws No. 45, item 205). The Regulations provide that elections shall be by general, direct and equal suffrage, and shall be held by secret ballot. The right to vote shall be held by persons who are Polish nationals who, as of the day of the elections, are 18 years or over. The right shall be

refused only to persons who are deprived of their public rights by a valid-in-law court decision, are deprived of their electoral rights by a decision of the Tribunal of State, or who are declared totally or partially incapacitated due to mental disease or mental retardation by a valid-in-law court decision.

143. The Act also ensures the participation in the elections of soldiers who are undergoing obligatory service in the armed forces, policemen quartered in barracks, hospital patients and patients in welfare homes, as well as persons in penal institutions and under arrest. Every person with the right of suffrage shall be entered into the electoral register, and shall have the right to lodge a complaint in the event of an irregularity in the register. In the event the complaint is disregarded the person concerned shall have the right to lodge a complaint with the court. Furthermore, any Polish national with the electoral right who as of the day of the elections is at least 21 and has been in permanent residence in Poland for at least five years can be elected to the Diet or to the Senate.

144. The elections are conducted by the State Electoral Commissions, regional electoral commissions and district electoral commissions. The State Electoral Commission is composed of three judges of the Constitutional Court, three judges of the High Court and three judges of the High Administrative Court. Each regional commission is composed of 11-15 judges of the appellate courts, regional courts and district courts with territorial jurisdiction. The right to submit lists of candidates for the Diet and the Senate shall be vested in the parties, political and social organizations and the voters. The Electoral Regulations shall give to each voter the right to collect signatures in support of the candidates for the Diet or the Senate, to distribute electoral programmes, to canvass on behalf of the candidates, as well as to organize electoral meetings. However, the Act makes the reservation that the collection of signatures, mentioned in the foregoing, shall be carried out in a place, time, and manner that excludes the application of any pressure to sign the document in support of given candidates.

145. The validity of the elections shall be determined by the High Court on the basis of the election report presented by the State Electoral Commission, and taking into account the opinions delivered as a result of an analysis of the protests against the validity of the elections. The announcements of the State Examination Committee prove that in the elections to the Diet and the Senate carried out on 19 September 1993, 10,587 candidates ran for the seats in the Polish Parliament. This means that for each of the 460 seats in the Polish Parliament on average 23 candidates ran and for every seat in the Senate 684 candidates ran; that is an average of about 7 candidates for each of the 100 senators' seats. In the elections of the communal councils carried out on 19 June for the overall number of 51,926 seats in the councils 181,907 persons stood for election.

Article 26

146. The principle expressed in article 26 of the Covenant that all persons are equal before the law and are entitled to equal protection of the law, irrespective of race, colour, sex, birth, language, religion, political and other opinion is constantly observed in Poland. The 1991 amendment to the

Commissioner of Citizens' Rights Act dated 24 August 1991 (Journal of Laws No. 83, item 371) extending the competencies of the Commissioner in matters connected with the protection of the human rights and freedoms also in respect of aliens in Poland, is an example.

Article 27

147. Inaugurated in Poland in 1989, progress in ensuring for ethnic (national) minorities their rights to preserve and develop their own social and cultural rights, to profess and practise their own religion and to use their own language also took place in the period covered by the present report.

148. At present all the minority groups have their own associations or some other social organizations. In 1993 there were 109 associations and 13 minority group foundations registered, and in 1994 about 120 organizations of this type carried out activities. The aim of these activities is above all to preserve and to increase the knowledge of their own history and traditions, to develop cultural activity, and in many instances also to study their mother tongue.

149. Apart from social activity the minority groups in Poland also carry out political activity. Belarusians in Poland have their own political party - the Belarus National Federation. In the Parliament one senator and four members of the Diet are representatives of the German minority, and one member of the Diet represents the Ukrainian minority. In the Diet a committee was set up - the National and Ethnic Minorities Committee, whose activities include matters connected with the preservation of the cultural heritage of national, ethnic and linguistic minorities and the protection of their rights.

150. National minorities have access to the public radio. In the regions where different minorities reside local radio stations broadcast programmes in the national languages of these minorities. Specific television programmes are also devoted to the problems of national minorities.

151. In recent years a considerable increase in the number of periodicals and publications published by different minorities has been reported. They are mainly supported from the government budget. For example, in 1993 there were 11 publications and 15 periodicals sponsored by the State, and in 1994 government resources supported 20 publications and 18 periodicals. Information relating to the minorities' rights to profess and practise their own religion was presented under article 18 of the Covenant. The basic regulations on the study of the minorities' mother tongue and pursuing the course of school study in their respective language are the already quoted Educational System Act dated 7 September 1991 and the Ordinance of the Minister of Education dated 24 March 1992 on the organization of education offering facilities to maintain the feeling of national, ethnic and linguistic identity of pupils belonging to minority groups (Journal of Laws No. 34, item 150).

152. In accordance with article 13 of the quoted Act a public school shall enable pupils to maintain the feeling of national, ethnic, linguistic and religious identity, and in particular the study of their own language and

history. Upon application from the parents such study shall be carried out in individual groups, grades and schools, in groups and grades with the supplementary study of the mother tongue, and in inter-school study units. The above-quoted ordinance of the Minister of Education provides regulations for the organization, forms and means of accomplishing the tasks specified in article 13 of the Act.

153. A study of the mother tongue is carried out in Poland for the following minorities: Belarusian, Ukrainian, German, Lithuanian, Slovak and Gypsy. In the school year 1993/94 a study of the mother tongue was carried out in 153 schools and included 9,896 pupils. The study of the Belarusian language was carried out in 43 schools for 3,596 pupils, of the Ukrainian language in 54 schools for 1,919 pupils, of the German language in 31 schools for 3,136 pupils, of the Lithuanian language in 11 schools for 724 pupils, of the Slovak language in 13 schools for 483 pupils, and of the Romany language in 14 grades of public schools. Among the schools where in the school year 1993/94 a minority group mother tongue was studied, there were four secondary grammar schools where the course of study was pursued in the mother tongue and three secondary grammar schools with supplementary study of the mother tongue. Handbooks for study of the mother tongue for the minority groups in all types of schools are purchased by the Ministry of Education and distributed to schools free of charge.